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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JAMES MICHAEL WILLIAMS,
12 Plaintiff,

13 v.

14 WILLIAM D. GORE, Sheriff of San
15 Diego County; M.D. ALFRED JOSHUA,
16 Defendants.
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Case No.: 15-CV-0654-AJB-PCL

ORDER:

**(1) ADOPTING THE REPORT AND
RECOMMENDATION IN FULL,
(Doc. No. 74);**

**(2) GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT, (Doc. No. 52); AND**

**(3) DECLINING TO ISSUE A
CERTIFICATE OF
APPEALABILITY**

24 On August 29, 2016, Defendants filed a motion for summary judgment based in part
25 on Plaintiff's failure to exhaust administrative remedies. (Doc. No. 52.) An evidentiary
26 hearing was held on June 15, 2017, on this issue. For the reasons set forth below, the Court
27 **ADOPTS** the Report & Recommendation ("R&R") in full, **GRANTS** Defendants' motion
28 for summary judgment, and **DECLINES** to issue a certificate of appealability.

1 **BACKGROUND**

2 This case's factual background has been exhaustively summarized in the R&R and
3 order adopting in part the R&R. (Doc. Nos. 74, 80.) The Court assumes familiarity with
4 those orders and will accordingly recite here only those facts necessary to understand the
5 case's current procedural posture.

6 Plaintiff instituted this 42 U.S.C. § 1983 claim, alleging violations of his Eighth
7 Amendment rights due to an alleged denial of medical care while incarcerated at George
8 Bailey Detention Facility. On January 20, 2017, Magistrate Judge Lewis issued an R&R,
9 recommending that this Court grant Defendants' motion for summary judgment and deny
10 Plaintiff's cross motion, finding that Plaintiff offered no admissible evidence to establish
11 exhaustion of administrative remedies. (Doc. No. 74.)

12 On March 13, 2017, Plaintiff timely filed an objection to the R&R, asserting, in
13 relevant part, that he had submitted six written grievances on five separate occasions by
14 placing them in the locked grievance box. (Doc. No. 78.) He supported his objection with
15 his own declaration, detailing the circumstances surrounding each submission. (*Id.* at 14–
16 22.) This Court declined to adopt the R&R in part on March 24, 2017, finding that disputed
17 material facts existed as to whether Plaintiff exhausted administrative remedies. (Doc. No.
18 80 at 11–16.) The Court ordered an evidentiary hearing on this issue. (*Id.* at 16.)

19 In preparation for that hearing, the Court permitted Plaintiff to file motions to compel
20 the attendance of witnesses at the evidentiary hearing. (*Id.* at 16–18.) Plaintiff submitted
21 three such motions to compel the attendance of four incarcerated witnesses and one
22 correctional officer. (Doc. Nos. 84, 86, 91.) A status conference was held on Plaintiff's
23 motions on June 2, 2017, at which time the Court granted Plaintiff's request as to the
24 correctional officer and denied Plaintiff's request as to one incarcerated witness. (Doc. No.
25 92.) Following additional briefing on the three other incarcerated witnesses, the Court
26 denied Plaintiff's request as to those witnesses for the reasons stated on the record at the
27 evidentiary hearing on June 15, 2017. (Doc. Nos. 93–95.) Following that hearing, the Court
28 took the matter under submission, and this order follows.

LEGAL STANDARD

The Ninth Circuit set forth the procedure district courts must follow when determining whether a § 1983 plaintiff has exhausted administrative remedies in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014). The district court should decide exhaustion, if possible, before reaching the case's merits. *Id.* at 1170. The district court may permit limited discovery, and the parties may move for summary judgment, on the issue of exhaustion. *Id.* In assessing whether summary judgment is appropriate, the district court must employ the usual rules governing this inquiry. *Id.* at 1173. Specifically, the “district court cannot resolve disputed questions of material fact; rather, that court must view all of the facts in the record in the light most favorable to the non-moving party and rule, as a matter of law, based on those facts.” *Id.*

If the district court denies summary judgment, at that point, the district court should decide “disputed factual questions . . . in the same manner a judge rather than a jury decides disputed factual questions relevant to jurisdiction and venue.” *Id.* 1170–71. In making its assessment, the district court may undertake a “preliminary proceeding,” such as an evidentiary hearing. *Id.* at 1168. One of the purposes of an evidentiary hearing is to “enable[] the finder of fact to see the witness’s physical reactions to questions, to assess the witness’s demeanor, and to hear the tone of the witness’s voice” *United States v. Mejia*, 69 F.3d 309, 315 (9th Cir. 1995). Indeed, it is only in “rare instances [that] credibility may be determined without an evidentiary hearing” *Earp v. Ornoski*, 431 F.3d 1158, 1169–70 (9th Cir. 2005); *accord Lake v. Lake*, 817 F.2d 1416, 1420 (9th Cir. 1987) (stating “[t]he district court has the discretion to take evidence at a preliminary hearing in order to resolve any questions of credibility or fact” when determining whether personal jurisdiction exists).

DISCUSSION

I. Credibility Determination and Exhaustion

At the four-hour evidentiary hearing, a total of five witnesses, including Plaintiff, testified. Having considered the evidence proffered by both sides, the Court finds that the

1 weight of the evidence supports concluding that the six written grievances Plaintiff
2 purports to have submitted via the grievance box were not filed. Plaintiff's protestations to
3 the contrary, the testimony of Defendants' witnesses render Plaintiff's theory highly
4 improbable. Lieutenant Jones undertook a detailed inquiry into whether Plaintiff submitted
5 grievances, which revealed zero evidence that Plaintiff filed medical grievances on or
6 around the days alleged. The medical personnel attested to the integrity of the medical
7 grievance system, which involves numerous checks and balances to ensure that submitted
8 grievances are logged and responded to, including the fact that the responsibility of
9 collecting and logging grievances is assigned to different medical staff on different days.
10 In light of Defendants' evidence, the Court does not find Plaintiff's testimony that he
11 submitted the grievances to be credible.

12 Following a de novo review of the evidence proffered, the Court concludes it is
13 simply improbable that all six of Plaintiff's grievances, purportedly placed in the grievance
14 box on five separate occasions, were never received or were somehow and for some reason
15 all destroyed by the different employees who retrieved them from the box. Accordingly,
16 the Court **ADOPTS** the R&R in full and **GRANTS** Defendants' motion for summary
17 judgment on the ground that Plaintiff failed to exhaust administrative remedies.

18 Defendants request that the Court sanction Plaintiff for what they characterize as an
19 abusive waste of the judicial process. Despite Plaintiff's lack of candor and production of
20 evidence that could not meet the basic standard of trustworthiness for admission, the Court
21 exercises its discretion and denies Defendants' request.

22 ***II. Certificate of Appealability***


23 When a district court enters a final order adverse to the applicant in a habeas corpus
24 proceeding, it must either issue or deny a certificate of appealability, which is required to
25 appeal a final order in a habeas corpus proceeding. 28 U.S.C. § 2253(c)(1)(A). A certificate
26 of appealability is appropriate only where the petitioner makes "a substantial showing of
27 the denial of a constitutional right." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)
28 (quoting 28 U.S.C. § 2253(c)(2)). Under this standard, the petitioner must demonstrate that

1 reasonable jurists could debate whether the petition should have been resolved in a different
2 manner or that the issues presented were adequate to deserve encouragement to proceed
3 further. *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). Here, the Court finds that
4 reasonable jurists could not debate the Court’s conclusion to grant summary judgment in
5 Defendants’ favor and therefore **DECLINES** to issue a certificate of appealability.

6 The Clerk of Court is ordered to enter judgment consistent with the order and close
7 the file.

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9 **IT IS SO ORDERED.**

10 Dated: June 16, 2017

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12 Hon. Anthony J. Battaglia
13 United States District Judge
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